

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR ELEMENTARY SCHOOL
DISTRICT AND DESERT MOUNTAIN
SELPA.

OAH CASE NO. 2013070285

ORDER GRANTING IN PART AND
DENYING IN PART MOTIONS TO
DISMISS

On July 19, 2013 Victor Elementary School District (District) filed a Motion to Dismiss Issues and Proposed Resolutions Two, Six, Seven and Eight (Motion #1). On July 23, 2013, Desert Mountain SELPA (SELPA) filed a Motion to Dismiss itself as a party (Motion #2). No oppositions were filed to either Motion #1 or Motion #2.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of the Office of Administrative hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

The IDEA contains no express provision allowing the award of advocate fees, and absent an agreement of the parties, attorney fees may not be awarded at the conclusion of the due process hearing. Instead, attorney fees are only awarded by a court of competent jurisdiction once a party appeals from a final due process hearing decision. (See Ed. Code, § 56507, subd. (b)(1) [attorney fees only awarded by courts]; *C.W. v. Capistrano Unified School District* (C.D. Cal., Dec. 5, 2012, No. SACV 11-1157 DOC (RNBx)) 2012 WL 6093765 [appeal found to be made for improper purpose of harassing a district when claim was for advocate fees that are not available as a matter of law].) In addition, monetary damages such as general, special, and punitive damages, are not relief available under the IDEA. (*Portland Public Schools* (9th Cir. 2012) 679 F.3d 1162, 1166.)

Although special education law does not provide for a summary judgment procedure, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, incorrect parties, etc.....).

DISCUSSION

Motion #1

Here, Motion #1 is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits with respect to Issues and Proposed Resolutions Two and Six. Accordingly, the motion is granted in part and denied in part as follows:

Issue and Proposed Resolution Two: While OAH does not have jurisdiction to determine the requirements of District's gifted and talented education (GATE) program, the issue of whether Student's placement was proper and/or the determination of the availability of a program to a Student, whether GATE or otherwise, is within the OAH's jurisdiction. District's request to dismiss Issue and Proposed Resolution Two is denied.

Issue and Proposed Resolution Six: Student's requests for office bathroom use and school nurse's administration of medication are matters which may be contained in an individualized education program as accommodations and are within the OAH's jurisdiction. District's request to dismiss Issue and Proposed Resolution Six is denied.

Issue and Proposed Resolution Seven: Student's request for reimbursement of advocate fees in the amount of \$800 and travel costs for Student's grandparents to travel from Nevada to help the family are not within OAH jurisdiction. Specifically, OAH does not award attorney fees, advocate fees are not available under the IDEA, and the travel costs claimed are the type of monetary damages remedy that is not available under the IDEA. District's request to dismiss Issue and Proposed Resolution Seven is granted.

Issue and Proposed Resolution Eight: Loss of work related income falls under the category of monetary damages which are not remedies available under the IDEA. District's request to dismiss Issue and Proposed Resolution Eight is granted.

Motion #2

SELPA sought a dismissal of itself as a party based on prior OAH rulings finding that it was not a local educational agency and that no allegations in the complaint directly show that SELPA was involved in decisions about Student's education. District is solely responsible for providing Student with a FAPE and for any remedy to the Student that the administrative law judge deems appropriate. Since there is no allegation that SELPA has a role in providing any special education or related services to the Student, and generally, as a matter of law it does not, it should be dismissed. SELPA's motion to dismiss itself as a party is granted. The matter will proceed as scheduled against the District as the sole remaining party.

ORDER

1. Motion #1: District's Motion to Dismiss is denied as to Issues and Proposed Resolutions Two and Six.
2. Motion #1: District's Motion to Dismiss is granted as to Issues and Proposed Resolutions Seven and Eight.
3. Motion #2: SELPA is dismissed as a party in the above-entitled matter. The matter will proceed as scheduled against the District as the only remaining party.
4. The matter will proceed as scheduled as to all the remaining issues, specifically issues One through Six.
5. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: July 30, 2013

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings